IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

OP.No. 38559 of 2002(M)

PETITIONER:

P.PONNAPPAN PILLAI, P.W.D.CONTRACTOR
'ANJALI', THAMALLAKKAL P.O., HARIPAD,
ALAPPUZHA DISTRICT.

BY ADV. SRI.GEORGE JACOB (JOSE)

RESPONDENTS:
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1. **STATE OF KERALA REPRESENTED BY SECRETARY TO GOVERNMENT, PUBLIC WORKS DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE CHIEF ENGINEER, PUBLIC WORKS DEPARTMENT, (BUILDINGS & LOCAL WORKS), THIRUVANANTHAPURAM.**

3. **THE SUPERINTENDING ENGINEER, PUBLIC WORKS DEPARTMENT, (BUILDINGS & LOCAL WORKS), THIRUVANANTHAPURAM.**

4. **THE EXECUTIVE ENGINEER, PUBLIC WORKS DEPARTMENT, BUILDINGS DIVISION, ALAPPUZHA.**

BY GOVERNMENT PLEADER SMT.N.SUDHA DEVI

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 22/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.65059/2002 IN OP. NO.38559/2002

DISMISSED

22/06/2007 **SD/- T.R.RAMACHANDRAN NAIR, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE COMMUNICATION DT. 4.1.98 OF THE 4TH RESPONDENT.

EXT.P2:- COPY OF THE LETTER DT. 28.4.97 FROM THE BHARATH PETROLEUM CORPORATION.

EXT.P3:- COPY OF THE COMMUNICATION DT. 16.8.99 TO THE 4TH RESPONDENT.

EXT.P4:- COPY OF THE LETTER DT. 22.9.99 FROM THE 4TH RESPONDENT ADDRESSED TO THE PETITIONER.

EXT.P5:- COPY OF THE LETTER DT. 25.2.2000 ADDRESSED TO THE 4TH RESPONDENT FROM THE ASSISTANT EXECUTIVE ENGINEER, P.W.D. BUILDINGS DIVISION, ALAPPUZHA.

EXT.P6:- COPY OF THE LETTER SENT BY THE PETITIONER TO THE 2ND RESPONDENT DT. 17.4.2000.

EXT.P7:- COPY OF THE LETTER DT. 12.12.2000 RECEIVED FROM THE 2ND RESPONDENT BY THE PETITIONER.

EXT.P8:- COPY OF THE ORDER DT. 14.12.2000 OF THE 4TH RESPONDENT.

EXT.P9:- COPY OF THE REPRESENTATION OF THE PETITIONER DT. 20.12.2000.

EXT.P10:- COPY OF THE LETTER DT. 23.10.02 FROM THE 1ST RESPONDENT.

EXT.P11:- COPY OF THE LETTER DT. 15.7.99 ADDRESSED TO THE 4TH RESPONDENT BY THE PETITIONER.

/TRUE COPY/

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T.R. Ramachandran Nair, J.

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O.P.NO.38559 of 2002-M

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Dated this the 22nd day of June, 2007

JUDGMENT

The petitioner is a P.W.D. Contractor who was awarded a contract work concerning improvements to the Kumarapuram Tribal Colony road in the Kumarapuram Panchayat under the Tribal Special Programme. The contract in question was confirmed by the department for an amount of Rs.4,25,624/- as per agreement No.1/EE/1997-98 . The requisite agreement was executed and the site was handed over to him on 19.4.1997. The work in question was construction of a road of 1776 sq. meter which included filling up of sand, earth work escavation, construction of retaining wall, laying dry rubble and ultimately laying cement concrete. According to the petitioner, the materials like bitumen and cement had to be supplied by the department.

2. Even though the petitioner started work, it is the case of the petitioner that there was some delay in supplying the cement and ultimately sanction was accorded by the 4th respondent by communication dated 26.4.1997 to purchase cement from the open market which was complied by the petitioner. Necessary work for completing the tarring was also done by

him by purchasing road metal of the required sizes and spread along with the entire road with red earth, submits the petitioner.

3. Subsequently, he had to wait for supply of bitumen as undertaken by the department and correspondences were received in the matter. Ext.P1 is a communication by the Executive Engineer addressed to the Chief Engineer, P.W.D. Administration, Thiruvananthapuram requesting to allot necessary funds for procuring the bitumen for the work in question. It was followed by another letter addressed to the Executive Engineer dated 16.8.1999, Ext.P3. But stalemate continued for a long time and by Ext.P5 letter dated 25.2.2000 the Asst. Executive Engineer brought to the notice of the Executive Engineer the state of affairs which has arisen wherein the required quantity of bitumen had not been issued to the contractor and also about the unwillingness of the contractor to proceed with the balance work due to financial trouble. The petitioner also move the Chief Engineer by Ext.P6 representation and he received a reply, Ext.P7 from the Chief Engineer. But by that time the department was of the view that the petitioner was at fault and therefore the proposal was to terminate the contract and to re-arrange the balance work at his risk and cost. Ext.P8 is the proceedings issued by the Executive Engineer dated 14.12.2000 whereby the contract was terminated and the balance work was re-arranged at the risk and cost of the contractor.

4. The petitioner challenged the steps by way of Ext.P9 before the

Government and approached this court by filing O.P. No.14698/2000 for releasing the balance amount. This court directed the Government to consider his grievance. But the decision taken by the Government was not in his favour and by Ext.P10 his appeal was rejected. Ext.P10 is under challenge in this original petition.

5. The respondents have filed a detailed counter affidavit. On a perusal of Ext.P10 and the averments in the counter affidavit, it can be seen that the respondents have got a case that the petitioner had not supplied and stored the required size and quantity of metal stone before requesting for bitumen and that the bitumen for the tarring work was available with B.P.C. Limited, Kochi and could have been purchased from open market, but it was not done by him.

6. Learned counsel for the petitioner submitted that the stand taken by the Government in Ext.P10 and also in the counter affidavit do not reflect the correct position, going by Exts.P1, P3, P4 and P5. It was pointed out that even the officials of the department have been corresponding with the the Chief Engineer to make available the bitumen to the petitioner for completing the work and therefore the finding now entered that the petitioner was at fault for not purchasing the same from open market is only an after thought. It is also submitted that while passing Ext.P10, the above documents have not been considered by the Government in arriving at the above conclusion. It is also pointed out that the allegation that he had not

stored metal stone at the site for completing the tarring work, is also not correct and going by the relevant records available with the respondents, it will be seen that his part of the work had already been completed at that time.

7. The above aspects are not properly dealt with by the Government while passing Ext.P10. On a reading of Ext.P10, it will be seen that the documents relied upon by the petitioner, Exts.P1, P3, P4 and P5 have not been considered at all. Therefore, there is total non-application of mind while passing Ext.P10 by way of non-consideration of the relevant documents relied upon by the petitioner.

8. Therefore, Ext.P10 is quashed and the matter is remitted back to the first respondent for a fresh decision in accordance with law. The first respondent will take up Ext.P9 representation and dispose of the same after affording an opportunity of being heard to the petitioner or his agent and final orders will be passed within a period of four months from the date of receipt of a copy of this judgment. Needless to say that Government will pass a speaking order after considering the contentions of the petitioner on merits.

The original petition is disposed of in the above terms.

(T.R. Ramachandran Nair, Judge.)

T.R. Ramachandran Nair, J.

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O.P.NO.38559 of 2002-M

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JUDGMENT

22nd day of June, 2007